

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF REDMOND**

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3
4 **IN THE MATTER OF APPLICATION OF)**
5 **JEFF NOWAK)**
6 **FOR APPROVAL OF A VARIANCE)**
7 _____)

FILE NO: L040027
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION

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10 **SUMMARY OF DECISION**

11 The application for a variance is **DENIED**.

12
13 **INTRODUCTION**

14 This is an application for a variance from the five-foot side and rear yard setbacks to permit an
15 existing detached shed to continue in its present location. The application came on before
16 Gordon F. Crandall, Hearing Examiner on March 8, 2004 at 7:00 PM.

17 Testifying under oath were:

18 Gibran Hashmi, Planner

19 Jim Roberts, Deputy Planning Director

20 Jeff Nowak, Applicant

21 Terry Provonsha, 7411 152nd Ave NE, Redmond

22 Shad Flynn, 7419 152nd Ave NE, Redmond

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26 The following exhibits were offered and admitted:

27 Exhibit A: Technical Committee Report dated February 27, 2004

28 Exhibit B: Staff PowerPoint Presentation

29
30 The hearing adjourned at 7:30 PM.

1 From the foregoing, the Hearing Examiner makes the following:

2
3 **FINDINGS OF FACT**

- 4 1. In June 2003, Code Compliance Officer Deborah Farris received a complaint concerning
5 a large structure recently created at 7420 151st Avenue NE which complainant believed
6 was located about one-foot from the property line. A records search revealed that no
7 permit had been issued for such an accessory building at this location. Farris visited the
8 site and requested permission to come onto the property, which was denied.
9
- 10 2. The existing building is one or two feet from the lines. Applicant seeks a variance from
11 the five-foot side and rear setbacks from the property lines.
12
- 13 3. The building was constructed on the footprint of a prior building that was falling down.
14 When the old building was constructed, the neighboring properties were not developed. A
15 fence along the rear of the property was actually about two and one half feet inside the
16 adjacent property, leading one to think that it was the actual property line.
17
- 18 4. Applicant did not obtain a City of Redmond building permit for the structure, even
19 though it appears to cover in excess of 120 sq. ft in area. It is about 16 feet in height.
20 Neighbors to the east and south each object to the granting of a variance from the
21 setback.
22
- 23 5. The Nowak property is level and there are no physical limitations to construction of an
24 accessory building in a conforming location on the lot. There are no sensitive areas that
25 would affect the location of the building.
26
- 27 6. If applicant had applied for a building permit, he would have been required to submit
28 drawings showing the property lines and the location of the building in relationship to the
29 existing lines. He would have been advised to observe the five-foot setback.
30

1 7. Any conclusion of law deemed to be a finding of fact is hereby adopted as such.

2
3 From these findings of fact the Hearing Examiner makes the following:

4
5 **CONCLUSIONS OF LAW**

6 1. The Hearing Examiner is authorized to conduct a hearing and to make a decision on an
7 application for a variance. A variance is a Type III land use decision heard and decided
8 by the Hearing Examiner based upon a recommendation from the Technical Committee.
9 RCDG 20F.30.40.

10
11 2. A variance is a mechanism by which the City may grant relief where practical difficulty
12 renders compliance with the provisions of that code an unnecessary hardship, where the
13 hardship is a result of the physical characteristics of the subject property and where the
14 purpose of that code and of the Comprehensive Plan can be fulfilled. RCDG
15 20F.40.180.010.

16
17 3. Variances may be approved only upon a finding that:

18 (1) The variance shall not be materially inconsistent with the limitation upon
19 uses of other properties within the vicinity and land use district in which the
20 subject property is located; and

21 (2) Such variance is reasonably necessary, only because of special physical
22 circumstances relating to the size, shape, topography, location or
23 surroundings of the subject property to provide it with use rights and
24 privileges permitted to other properties in the vicinity and in the land use
25 district of the subject property; and

26 (3) The conditions or situations giving rise to the variance application have not
27 been created or caused by the applicant or recent prior owner of the subject
28 property; and

29 (4) The variance will not constitute a grant of special privilege inconsistent with
30 the limitation upon uses of other properties in the vicinity and land use
district of the subject property; and

- 1 (5) The granting of the variance constitutes an equitable application of the
2 requirements of the land use regulations where strict adherence in a given
3 situation would create unnecessary hardship for the property owner; and
4 (6) The variance is the minimum necessary to grant relief to the applicant; and
5 (7) The variance does not relieve an applicant from conditions established
6 during prior permit review; and
7 (8) All approved variances otherwise comply with the requirements of the
8 Redmond Community Development Guide, including the Comprehensive
9 Plan.

10 The review criteria for a Variance are set forth at RCDG 20F.40.180-040.

- 11 4. Here the structure is not materially inconsistent with the uses of other properties, as
12 applicant has pointed out in at least three similar examples. However, the variance is not
13 reasonably necessary due to physical limitations. Applicant's site is level and
14 unrestricted. By constructing a building without a permit, applicant is responsible for the
15 hardship from which he seeks relief. To grant the variance here would constitute a special
16 privilege, even though there are examples of other non-conforming or illegal structures.
17 In short, the application for a variance does not satisfy the ordinance criteria for approval.
18
19 5. The Technical Committee recommends that the application be denied with conditions
20 that the building be moved, reduced or demolished within six months. Such conditions
21 exceed the scope of this hearing, which is to decide whether or not a variance should be
22 granted. Enforcement to secure compliance with the setback requirements of the RCDG
23 is the responsibility of the Code Compliance Officer under procedures set forth in RMC
24 1.18.
25
26 6. Any finding of fact deemed to be a conclusion of law is adopted as such.
27

28 **DECISION**

29 The application of Jeff Nowak for variances from the five-foot side and rear yard setbacks
30 for an accessory building at 7420 151st Avenue NE is **DENIED**.

1 Done this 16th Day of March 2004.

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4 /s/ Gordon F. Crandall

5 **GORDON F. CRANDALL**
6 **HEARING EXAMINER**
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You are hereby notified that the foregoing Findings of Fact, Conclusions, and Decision are the final action on this application subject to the right of appeal to the Redmond City Council. Appeal procedures are governed by RCDG 20F.30.40-110 (Ordinance 2118) to which the reader is referred for detailed instructions. The written appeal must be received by the **Redmond Permit Center** no later than **5:00 P.M. on March 30, 2004, or within 10 business days following final action by the Hearing Examiner if a request for reconsideration is filed.** Please include the application number on any correspondence regarding this case.

Nowak Variance - 6 of 6
3/16/2004

**City of Redmond
Office of the Hearing Examiner
P.O. Box 97010
Redmond, WA 98073-9710**